

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2014-2015**

I. Overview

The Annual Litigation Expenses for Fiscal Year (“FY”) 2014-15 were \$118.9 million, up 24 percent from \$95.6 million spent in FY 2013-14, when litigation expenditures fell far below the five-year average of \$105.2 million. The \$118.9 million spent this year includes \$59.9 million in judgments and settlements and \$59 million in attorneys’ fees and costs (“fees and costs”). The increase was, in large part, the result of 12 judgments that totaled \$15.7 million.

II. Judgments and Settlements

Of the \$118.9 million paid in litigation expenses this year, \$59.9 million was paid to satisfy 12 judgments and to settle 233 cases. The \$59.9 million spent on judgments and settlements in FY 2014-15, which was the highest total paid since FY 2011-12, represented a nearly 50 percent increase as compared to the \$40.3 million expended on judgments and settlements in FY 2013-14.

Judgments

In FY 2014-15, judgments totaled \$15.7 million. Of the 12 judgments paid in FY 2014-15, five exceeded \$1 million. Three cases involved Law Enforcement issues, and two matters pertained to Employment disputes.

In one of the Law Enforcement matters, a jury concluded that a Sheriff’s Deputy wrongfully shot and killed the decedent (*Thomas* - \$6 million). Another jury concluded that Sheriff’s Deputies used excessive force to overcome a motorist during a traffic stop (*Tulcey* - \$1.9 million). In the third Law Enforcement case, the jury found that Sheriff’s Deputies used excessive force by utilizing pepper spray to subdue an arrestee during a landlord-tenant dispute (*Dugan* - \$1.6 million).

In one of the two Employment actions, a Sheriff’s Deputy was awarded \$3.1 million when the jury found that Darren Hagger was wrongfully terminated for investigating the involvement of his fellow Sheriff’s Deputies in drug trafficking activities and a homicide. In the final judgment that exceeded \$1 million this year, which involved the discharge of a former Department of Children and Family Services social worker who operated her own side-business by providing parenting education to clients served by the Department, a jury

concluded that her termination was the result of retaliation due to her complaints about denial of promotions and overtime (*Abyane* - \$1.5 million). The remaining seven judgments against the County totaled \$1.6 million this year.

Settlements

The County paid \$44.2 million in settlements this year, \$9.7 million more than it paid in FY 2013-14. Of the 233 settlements paid this year, seven exceeded \$1 million.

Three of these million dollar settlements stemmed from the Sheriff's Department, including two Deputy-involved shootings (*De La Trinidad* - \$5.3 million and *Cabrales* - \$1.5 million), in addition to a suicide at the Twin Towers Correctional Facility (*Johnson* - \$4 million).

Three of these million dollar settlements arose from LAC+USC Medical Center, where it was alleged that: (1) the staff delayed treatment of an aortic stent placed by a non-County facility (*Malone* - \$4.5 million); (2) postponed surgery on a brain tumor (*Perez* - \$1.65 million); and (3) perforated an artery during a laparoscopic procedure (*Castillo* - \$1.5 million).

The final settlement that exceeded \$1 million was paid to a juvenile ward at the Probation Department's Camp Miller, where the complainant alleged that he was beaten by fellow detainees (*Marshall* - \$1.2 million).

These seven settlements totaled approximately \$19.7 million and accounted for 45 percent of the \$44.2 million paid in settlements this year.

III. Attorneys' Fees and Costs

In addition to \$59.9 million paid in judgments and settlements, the \$118.9 million paid in litigation expenditures this year also included a nearly equal amount in attorneys' fees and costs: \$59 million, or seven percent more than the \$55.3 million paid last year. Of the \$59 million paid in fees and costs in FY 2014-15, \$46.8 million was paid to Contract Counsel, and \$12.2 million was billed by County Counsel to various County departments for litigation services. County Counsel billings include the fees and costs for overseeing litigated cases assigned to Contract Counsel, as well as for handling cases solely in-house. "Fees" generally refer to the hourly rate paid to counsel, and "costs" include a variety of expenses related to, among other items, court reporters, experts, and copying.

Contract Counsel

At \$46.8 million, Contract Counsel fees and costs were up \$3.9 million, or 9 percent, as compared to the \$42.9 million paid last year.

Contract Counsel *fees* were up \$1.9 million, or five percent, over the \$36.7 million paid last year, and Contract Counsel *costs* rose by a similar amount, up \$2 million from \$6.2 million last year to \$8.2 million this year. The increase in Contract Counsel *fees* occurred primarily in the areas of Auto Liability, General Liability, and Medical Malpractice. The Sheriff's Department realized increases in all three areas, with significant jumps in both Auto Liability and Medical Malpractice cases.

Contract Counsel *costs* rose moderately in the areas of Law Enforcement, Employment, and Auto Liability. The Sheriff's Department was the major contributor to increased Contract Counsel costs in the areas of Law Enforcement and Auto Liability. Contract Counsel costs involving Employment cases were up compared to last year in several departments, including Health Services, Children and Family Services, and the Fire Department. The Los Angeles Superior Court Consolidation Plan, which eliminated all court reporter positions for civil trial courts and required court reporters to be paid by the litigants, continued its negative impact on costs this fiscal year.

County Counsel

For the second year in a row, County Counsel fees and costs declined, down \$230,000 from \$12.4 million in FY 2013-14 to \$12.2 million in FY 2014-15. County Counsel *fees*, including those related to oversight, amounted to \$10.9 million, down three percent from the \$11.3 million billed last year. Specifically, County Counsel fees fell in the areas of Law Enforcement, Auto Liability, and Environmental. The amount billed to the Sheriff's Department for County Counsel fees on Law Enforcement and Auto Liability matters declined this year compared to last year, and fees billed to the Departments of Public Works and Parks and Recreation on environmental cases were also down.

However, the decrease in County Counsel fees was somewhat offset by the spike in *costs*, which rose seven percent to \$1.2 million this year. The increase in costs occurred primarily in Law Enforcement matters for both the Sheriff's Department and Probation Department, in General Liability matters for the Department of Public Works, and in Auto Liability cases for the Department of Children and Family Services.

IV. Department Litigation Expenditures

In FY 2014-15, ten County departments spent \$107.2 million, or 90 percent, of the County's \$118.9 million in litigation expenditures. These expenses were comprised of judgments and settlements, as well as fees and costs, in a variety of areas, including Law Enforcement, Medical Malpractice, General Liability, Employment, and Auto Liability. In FY 2014-15, the expenditures for the top ten departments ranged from a high of \$60,983,093 by the Sheriff's Department to a low of \$1,264,856 paid by the Board of Supervisors. The litigation expenditures of the top ten departments for FY 2014-15 follow:

ANNUAL LITIGATION EXPENSES – TOP TEN DEPARTMENTS FY 2014-15	
Sheriff	\$60,983,093
Health Services	\$18,907,908
Public Works	\$7,239,249
Children and Family Services	\$7,222,330
Probation	\$4,180,839
Fire	\$2,402,839
Parks and Recreation	\$1,775,348
District Attorney	\$1,726,942
Chief Executive Office	\$1,540,796
Board of Supervisors	\$1,264,856

V. Contract Cities and Special Districts

Of the \$118.9 million reported in Annual Litigation Expenses in FY 2014-15, the Contract Cities Trust Fund and so-called other special districts paid approximately **\$10.6** million. The County paid the remaining \$108.3 million.

A. *Contract Cities*

In FY 2014-15, the Contract Cities Trust Fund paid \$8.8 million of the \$118.9 million in Annual Litigation Expenses. This \$8.8 million payment, which included judgments, settlements, fees and costs, was primarily the result of liabilities arising from the alleged misconduct of Sheriff's Deputies contractually assigned to various cities throughout the County.

B. *Special Districts: Water and Flood Control*

1. *Water Districts*

In 2004, the Los Angeles County Water District No 40 (Antelope Valley) filed a lawsuit, which was subsequently joined by District No. 35 (Santa Clarita Valley), seeking a judicial determination of the rights of public water suppliers and landowners to capture groundwater from the Antelope Ground Water Basin ("Basin"). The County's lawsuit was in response to two actions brought against the Water Districts by two of the Basin's largest agricultural companies. Approximately \$1.5 million of the \$118.9 million in litigation expenses in FY 2014-15 was attributable to this adjudication of groundwater rights in the Antelope Valley. These fees and costs are paid from the

revenue stream of the Water Works District. Therefore, although the Antelope Valley litigation expenses are included in the County's annually reported total litigation expenditures, along with the \$7.2 million in expenditures of the Department of Public Works, payment of the fees and costs for the Antelope Valley water rights litigation does not derive from the County General Fund.

2. *Flood Control Districts*

In 2008, the Natural Resources Defense Council ("NRDC") and the Santa Monica Baykeeper ("Baykeeper") brought a lawsuit pursuant to the federal Clean Water Act, alleging that the County and the Flood Control District violated the Los Angeles County municipal storm water permit by allowing pollutants to exceed water quality standards in Los Angeles Rivers, watersheds, and beaches. A number of appeals to the Ninth Circuit have resulted from this complex and protracted litigation. The Department of Public Works paid \$222,000 in fees and costs on behalf of the Flood Control District in FY 2014-15, and the Chief Executive Office paid \$192,090 on behalf of the County in FY 2014-15. The Flood Control District will reimburse the Department of Public Works for the \$222,000 it paid this year.

In addition, the Arroyo Seco Foundation sued to set aside the approval of the Devil's Gate Reservoir project based upon a purportedly defective Environmental Impact Report. The Flood Control District contributed \$100,501 to the defense of this matter in FY 2014-15.

VI. Dismissals

In FY 2014-15, the County disposed of 169 cases without payment of settlements, judgments or attorneys' fees to opposing parties and without any County liability. One hundred thirteen, or 67 percent, of these 169 dismissals resulted from voluntary actions by Plaintiffs and/or their attorneys (on nearly every occasion prompted by a dispositive motion or other action by the County). Fifty-six of the 169 dismissals, or 33 percent, were involuntary to the extent that they were effectuated by successful County motions, including demurrers, motions to dismiss, summary judgments, and discovery motions resulting in terminating sanctions. Five of the 169 dismissals occurred as a consequence of the opposing parties' failure to timely prosecute the actions.

VII. New Cases

The number of new cases involving the County fell below the 800 mark for the third consecutive fiscal year and realized a slight increase of two percent from 763 in FY 2013-14 to 773 in FY 2014-15. The Sheriff's Department led the way with 232 new cases, followed by 85 new cases for the Department of Health Services, and 58 for the Department of Public Works. All other Departments fielded fewer than 45 new cases in FY 2014-15. The 773 new cases this year fall within 13 various categories or case types: Law Enforcement (174),

Dangerous Condition (144), Auto Liability (112), Employment (84), General Liability (77), Real Property (61), Medical Malpractice (43), Foster Care (22), Condemnation Defense (19), Breach of Contract (16), Tax (14), Elections (4), and Environmental (3).

VIII. Trials, Writs, and Appeals

A. Trials

The County tried 25 cases in FY 2014-15, eight fewer than the 33 cases tried in FY 2013-14. The County prevailed in 64 percent, or 16 trials, this year, compared to 17 victories in FY 2013-14. There were no mistrials this year compared to four in FY 2013-14. The County prevailed in six employment cases, four search and seizure matters, three excessive force cases, one stop and detain case, one failure to protect claim, and one auto liability case. Of the nine losses, a Sheriff's Department shooting case, *Burley*, was the most expensive. In *Burley*, the Plaintiff, who threatened to kill his pregnant girlfriend and was believed to have been under the influence of PCP, lost consciousness and subsequently died after force was used to overcome his resistance. The trial, which took place during the time of the well-publicized protests stemming from Eric Garner's death, resulted in an adverse jury verdict of \$8 million that has been appealed by the County.

B. Writs

Just like last year, the County was an interested party in eight writs of mandamus and/or prohibition. The County was not the moving party in any writ proceedings this year. Adverse parties prevailed against the County in two writs this year and were unsuccessful in one. The remaining five writs this year stemmed from challenges to the dissolution of California Redevelopment Agencies and the resulting reallocation of funds at the direction of the California Department of Finance to the County Auditor-Controller. These proceedings either had no demonstrable impact or their effects were *de minimis*.

C. Appeals

The County won 80 percent of the 25 appeals to which it was a party this year. The County prevailed in the three appeals that it initiated, and 17 of the 20 appeals commenced by adverse parties. There were two split decisions in which both the County and the adverse parties appealed.

Two appeals were particularly significant: *Rodriguez* and *Nichols*. In *Rodriguez*, a husband alleged that his wife, Plaintiff, who was 20 years his junior, was trying to poison him and to bilk his estate. Sheriff's Deputies were called to investigate after the family reported their suspicions. Plaintiff alleged that the Sheriff's Deputies engaged in a three-year long conspiracy to inflict emotional distress on her. At trial, a jury awarded the Plaintiff \$2.25 million in

damages. On appeal, the County asserted the judgment must be reversed, as the alleged conduct occurred in the course and scope of the Deputies' employment, and the trial court failed to give a jury instruction as to their qualified immunity. The California Court of Appeal reversed, finding that the trial court committed instructional error and that the error was prejudicial to the County defendants. In *Nichols*, a County attorney claimed to be the victim of department discrimination because of her race and because of her marital status (single). She further alleged that the Department of Children and Family Services failed to correct the discrimination and retaliated against her due to her complaints by refusing to promote her and by transferring her to an undesirable location. The California Court of Appeal upheld the trial court's summary judgment in favor of the County, concluding that Plaintiff's failure to promote was the result of less than satisfactory scores on her promotional exam and therefore based upon a legitimate, nondiscriminatory reason. The Court of Appeal also upheld the attorneys' fee award to the County.

IX. Recoveries

The County recovered \$4,583,468 through its litigation efforts in FY 2014-15. As a result of a complaint, in collaboration with 19 other public agencies, against Office Depot for alleged overcharging between 2002 and 2011, the County collected a total of \$2,416,616. Similarly, the County collected \$928,598 against a manufacturer of LCD flat screen panels for rampant price fixing and \$550,000 against a fuel supplier for overcharges and misrepresentations. An additional influx of funds stemmed from recoupment of defense costs on an indemnity claim against a contractor following a motor vehicle accident; recovery of back rent, following the breach of a lease by the defendant regarding property owned by the Los Angeles County Flood Control District; collection of fines and penalties for ongoing accumulation of flammable weeds and brush on two undeveloped lots; recovery of cleanup costs expended by the Los Angeles County Flood Control District as a result of a hazardous chemical runoff due to firefighting efforts at a commercial building; collection of noncompliance fees for unlawful grading beyond the scope of a hillside management permit; and an award of costs following the County's successful summary judgment motion.